

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FROYLAN CEBALLOS,

Defendant.

8:02CR312

ORDER

This matter is before the Court on the Clerk of Court's notice that the defendant filed an untimely appeal. [Filing No. 247](#). There is also pending a copy of the Clerk's in forma pauperis memo. [Filing No. 248](#). The Court sentenced defendant on January 29, 2004, to Count I of the Indictment. The Court committed the defendant to the custody of the Bureau of Prisons for 324 months. [Filing No. 170](#). The Court reduced the defendant's sentence from 324 months to 262 months on September 29, 2015. Filing Nos. 243 and 244. On November 12, 2015, defendant filed a Notice of Appeal, in order to appeal this Court's decision reducing his sentence. [Filing No. 246](#).

A defendant generally has 14 days from the date of the judgment and/or order to file an appeal. See Fed. R. App. P. 4(b)((1)(A). The district court may extend that deadline for a period not to exceed 30 days from the expiration of the time otherwise set forth in Rule 4(b) for good cause or excusable neglect. Fed. R. App. P. 4(b)(4). Even if the Court finds that there is good cause for an extension, which it does not, the defendant has failed to request a motion for an untimely appeal.

Further, the Court will deny the defendant's motion to proceed in forma pauperis. With regard to this appeal, defendant did not file an in forma pauperis pleading or

affidavit, did not file a trust account statement, and did not pay the \$505.00 filing fee. As the appeal is untimely it is also deemed as frivolous. Since the appeal is deemed frivolous, the defendant is not allowed to proceed in forma pauperis.

THEREFORE, IT IS ORDERED THAT defendant's notice of appeal, [Filing No. 246](#), is untimely. Further, the Court determines that defendant is not permitted to proceed in forma pauperis in this case. [Filing No. 248](#).

Dated this 17th day of November, 2015

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge